82-1015

NO. _____

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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

MONNIE DERICKSON, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

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v.

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Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

QUESTIONS PRESENTED

I

WHETHER BY THE MISAPPLICATION OF RULE 801(d)(2)(E) OF THE FEDERAL RULES OF EVIDENCE THE COURT ALLOWED INTO EVIDENCE IRREPARABLY PREJUDICIAL TESTIMONY VIOLATING THE DEFENDANTS' FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION.

DEFENDANTS

DEBBIE NEWSOM
DONALD NEWSOM
LARRY NEWSOM
BEVERLY MEHRATZA
MONNIE DERICKSON

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OPINION BELOW

This case has not been reported by the courts below. The opinion of the United States Court of Appeals for the Sixth Circuit, styled "Order" and filed by that Court on June 22, 1982, is appended to this Petition. Cases no. 81-5297, 81-5345, 81-5346, and 81-5347. A Petition for Rehearing En Banc, was filed and was denied on October 28, 1982. A copy of the order is appended to this Petition. A Motion for Stay of Mandate was then filed by the Petitioner on November 12, 1982, and was favorably acted upon by the Court on November 16, 1982. A copy of the Motion and Order is appended to this Petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit is set out in the Appendix hereto. Juris-

diction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are set out below:

AMENDMENT V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against

him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 21 U.S.C. §841(a)(1)

§841 Prohibited acts A - Penalties

(a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or...

TITLE 18 U.S.C. §2

Principles

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

TITLE 18 U.S.C. §371

Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

STATEMENT OF THE CASE

On November 18, 1980, the Grand Jury for the Western District of Tennessee returned a seven count indictment against the named Defendants: Beverly Mehratza, Monnie Derickson, Debbie Newsom, Donald Newsom, and Larry Newsom. Count One charged a conspiracy among all the Defen-

dants to possess and distribute marijuana and cocaine. Counts Two through Five charged Mehratza, Derickson, Debbie Newsom and Donald Newsom with distribution of marijuana. The next Count, Six, charged that all Defendants, with the exception of Mehratza, distributed cocaine. The last Count, Count Seven, charged only Larry Newsom with the distribution of marijuana. (Title 21 U.S.C. §841(a)(1) and Title 18 U.S.C. §2 and Title 18 U.S.C. §371)

Trial of the case commenced on March 4, 1981, and one week later--March 11--all Defendants were found guilty on all counts, except Larry Newsom. He was found guilty on Counts One and Seven--but not guilty on Count Six.

Defendant Monnie Derickson was sentenced on April 21, 1981. She received FIFTEEN (15) MONTHS as to Count Four; EIGHTEEN (18) MONTHS with FOUR (4) YEARS

Special Parole as to Count Six. Execution of the sentence as to Count Four was suspended and Defendant was placed on probation for a period of FOUR (4) YEARS running concurrently with the Special Parole imposed as to Count Six. Sentence as to Count Six was to run concurrently as to that of Count One, resulting in a total sentence of EIGHTEEN (18) MONTHS with four years Special Parole and Probation running concurrently.

Defendant Larry Newsom was sentenced on April 30, 1982. He received a TWO (2) YEAR sentence, with SIX (6) MONTHS to serve and the balance suspended, and was fined the sum of SEVEN HUNDRED AND FIFTY ($750.00) DOLLARS as to Count One. Imposition of sentence was suspended as to Count Seven, and he was placed on probation for a period of TWO (2) YEARS.

Defendant Beverly Mehratza was sen-

tenced on April 30, 1981, to ONE (1) YEAR as to Count One, imposition of sentence to be suspended. A fine as to Count One was imposed in the sum of TWO THOUSAND ($2,000) DOLLARS. A THREE (3) YEAR probation was given for the conviction as to Count Two. Imposition of sentence was suspended as to Counts Three, Four, and Five, but a THREE (3) YEAR probation was given to run concurrent with that as to Count Two. This resulted in a total sentence of ONE (1) YEAR imprisonment with THREE (3) YEARS probation to follow, with a TWO THOUSAND ($2,000) DOLLAR fine.

Defendant Debbie Newsom was sentenced on May 1, 1981, under the Federal Youth Corrections Act, with sentence being suspended and the Defendant placed on probation for a period of THREE (3) YEARS.

Defendant Donald Newsom was also sentenced on May 1, 1981, to imprisonment for

a period of SIX (6) MONTHS with THREE (3) YEARS Special Parole as to Count Six. Imposition of sentence was suspended as to Counts One and Five, and Defendant placed on probation for TWO (2) YEARS to begin at the termination of the sentence imposed in Count Six.

Defendants Monnie Derickson, et al. filed Notice of Appeal and appealed to the Sixth Circuit Court of Appeals. The Sixth Circuit panel affirmed the judgment of the United States District Court for the Western District of Tennessee on June 22, 1982. Following the Sixth Circuit's denial of the Defendants' Petition for Rehearing En Banc (Order dated October 28, 1982), the Court of the Sixth Judicial Circuit granted a Stay of Mandate (Order issued November 16, 1982), pending this Petition for Writ of Certiorari.

Original jurisdiction in the United

States District Court was predicated upon an alleged violation by Petitioners of Title 21 U.S.C. §841(a)(1) and Title 18 U.S.C. §§2, 371.

ARGUMENT

Defendants Derickson, et al. assert that the Courts have based their opinion almost in its entirety on both inadmissible and extraneous matters, none of which should have ever been allowed into the record. Counsel for the Defendants submitted what was styled an Enright motion, asking that the Government be required to structure the proof, to the end that any alleged statements of any alleged co-conspirators would not be allowed into evidence unless or until a conspiracy was established.

The panel which considered this matter relied heavily on the testimony of the Government's confidential informant as

to statements allegedly made by Beverly Mehratza and an alleged co-conspirator. This evidence clearly seems to be the mastic used by the Government to bind and hold this matter together, and also, the common thread which runs throughout and creates this supposed conspiracy.

According to Federal Rules of Evidence Rule 801(d)(2)(E), these statements should never have been admitted into evidence, even to attempt to prove the existence of a conspiracy. The statements were hearsay. The exceptions to the hearsay rule would only be properly brought into play if the existence of the conspiracy were established beforehand.

Rule 801(d)(2)(E) reads as follows:

> (d) Statements which are not hearsay. A statement is not hearsay if--
>
> (2) Admissions by party opponent. The statement is offered against a party and is
>
> (E) A statement by a co-conspirator of a party

> during the course and in furtherance of the conspiracy. [Emphasis supplied by counsel]

The alleged conversation, which the Government relied on and is here in question, concerns two girls who were well acquainted and were discussing various matters. The confidential informant steered and directed the scope and course of the conversation. Needless to say, the conversation was steered into the area of drugs. Keeping in mind that one of the bases for admitting co-conspirator statements is their sometime high degree of trustworthiness (Levie, Hearsay and Conspiracy, 52 Michigan Law Review 1159, 1165), one would be hard pressed to believe that the boastful, self-serving claims of Beverly Mehratza had any basis in fact.

Submitting to the Court one of the very material portions and a direct quote attributed to Ms. Mehratza and allegedly

preserved on tape in a conversation between Ms. Mehratza and the confidential informant:

> "...we had ten thousand pounds of marijuana in the ---damn car plus four hundred or five hundred pounds of cocaine."

The admission of these exaggerated, highly embellished claims by Ms. Mehratza was clearly and inarguably prejudicial to all Defendants in this case. No great intellect is required to visualize the effect on the minds of the jurors--the grandiose, exotic drug scenarios they must have imagined. Such testimony could only so taint the legal process in a manner as to render any subsequent conviction unjust. Just as the pouring of a small amount of poison into a well poisons the whole well, so did the admission of the improper evidence in this case deny the Defendants the fair trial which the law assured them.

It is submitted that there is no

other basis in law for the admission of this particular conversation, and certainly the Rule 801(d)(2)(E) exception does not apply. This statement is, was, and always will be hearsay, which is not saved by any of the accepted or established exceptions to the hearsay rule, and should never have been allowed into evidence.

Apart from the incredible statements by Beverly Mehratza, the Government is left with a conspiracy theory based solely on the existence of a family relationship among the Defendants. The various co-defendants' convictions result and are supported merely by a guilt by association, and the mere fact that one is related to the other by blood or marriage. This is clearly an improper basis for a conspiracy conviction. (U.S. v. Falcone, 311 U.S. 205, and U.S. v. Webb, 359 F.2d 558) It appears to be true that individual persons

charged in this matter might well have been involved in a very small, illegal marijuana transaction and that, if unable to supply this small demand, they would then seek another source. Such small transactions are obviously of the import and quality handled in General Sessions or small offense courts. And, in addition, this Court has recognized that a mere occasional transaction between parties does not rise to the dignity of a conspiracy. Citing Krulewitch v. U.S., 336 U.S. 440, 447, in Mr. Justice Jackson's concurring opinion:

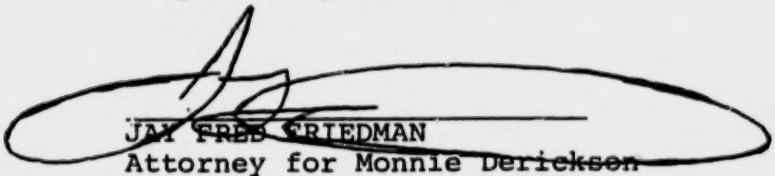
> "And I think there should be no straining to uphold any conspiracy conviction where association for the substantive offense is adequate and the purpose served by adding the conspiracy charge seems chiefly to get procedural advantages to ease the way to conviction."

The Defendant Mehratza is convicted of a conspiracy to distribute both marijuana and cocaine. The only discussion of

cocaine on her part is found in the quotation hereinbefore referred to, which can at best be categorized as a mere flight of fancy. While it is a statement which she apparently made, it is certainly more prejudicial than probative, when considered in light of the physical impossibility of the accuracy or truthfulness thereof. Not only this, but by physically leaving the country and being gone for some month or two before any cocaine was in existence or sold, she seemed to have withdrawn from any alleged conspiracy.

Defendants one and all accordingly pray that this Honorable Court conclude that the improper admission of the prejudicial hearsay has effectively denied to them the fair trial guaranteed, and would pray for relief as the Court may see fit.

Respectfully submitted,



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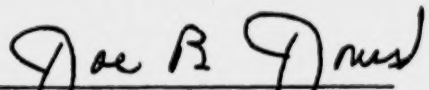

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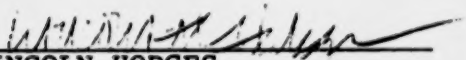

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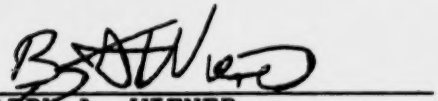

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APPENDIX

Nos. 81-5297, 81-5345, 81-5346, 81-5347

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA	)	
	)	
Plaintiff-Appellee	)	
	)	
vs.	)	
	)	
MONNIE DERICKSON (81-5297)	)	O R D E R
DEBBIE NEWSOM & DONALD NEWSOM (81-5345)	)	
LARRY NEWSOM (81-5346)	)	
BEVERLY MEHRATZA (81-5347)	)	
	)	
Defedants-Appellants	)	

Before: ENGEL and CONTIE, Circuit Judges; and TAYLOR, District Judge.*

The five defendants appeal from their criminal convictions for distribution and conspiracy to distribute marijuana and cocaine. Seven counts were charged in the

*The Honorable Robert L. Taylor, United States District Judge, Eastern District of Tennessee, sitting by designation.

indictment. Count One charged all defendants with conspiracy to distribute marijuana and cocaine. Counts Two and Three charged that Beverly Mehratza distributed one pound of marijuana on two occasions, March 13, 1980, and March 28, 1980. Count Four charged that Monnie Derickson, aided and abetted by Beverly Mehratza and Debbie Newsom, distributed one pound of marijuana on April 8, 1980. Count Five charged that Debbie Newsom, aided and abetted by Beverly Mehratza, Monnie Derickson and Donald Newsom, distributed one pound of marijuana on May 22, 1980. Count Six charged that all defendants except Beverly Mehratza distributed two grams of cocaine on July 17, 1980. Count Seven charged that Larry Newsom distributed one pound of marijuana on August 7, 1980. The jury returned guilty verdicts on all counts except that it found Larry Newsom not guilty of distributing cocaine (Count Six).

The case involves six drug buys made by a government informant, Sue Sandy, from the five defendants. All of the defendants are related: Monnie Derickson is the mother of Beverly Mehratza and Debbie Newsom; Donald Newsom is Debbie's husband; and Larry Newsom is Donald's brother.

Prior to going to work for the Memphis police, Sue Sandy had bought marijuana from Beverly Mehratza. Sandy testified that Derickson supplied Mehratza with garbage bags full of marijuana and that Mehratza bragged about bringing huge quantities of marijuana and cocaine up from Florida.

The first buy occurred on March 13, 1980, with Sandy buying one pound of marijuana from Mehratza. All six drug buys were taped. During this sale, Mehratza told Sandy that the marijuana came from Donald and Debbie Newsom. The second buy occurred on March 28, 1980, with Mehratza selling another pound of marijuana to Sandy.

On this occasion, Mehratza told Sandy that she and Derickson would soon be picking up large quantities of marijuana and cocaine. During the next week, Sandy talked to Derickson, Mehratza, and Debbie Newsom about buying more drugs. On April 8, 1980, Sandy made the third buy with Derickson delivering one pound of marijuana to her. As she left, Derickson said that she had to go to Debbie Newsom's house to pick up more marijuana. The fourth buy was made on May 22, 1980, with Sandy buying a pound of marijuana at Donald and Debbie Newsom's house. Only Debbie was present until the end of the sale when Donald entered the room and directed Sandy to pay Debbie. The pound was one ounce short, so, a few days later, Mehratza brought over one ounce of marijuana and Debbie Newsom handed it to Sandy.

Sandy had previously talked to Mehratza about buying cocaine. No sale was made

until July 17, 1980. After delivery of the cocaine, Sandy complained to Derickson about the quality of the cocaine. Derickson told her that everyone else had liked it. Earlier, Derickson had said that Donald Newsom had tested the cocaine and found it to be high quality. The last buy was made on August 7, 1980. Sandy had negotiated with Donald and Debbie Newsom to buy a pound of marijuana, but when Sandy called to set up delivery, Donald was not home. Larry Newsom volunteered to make the sale. He had Sandy follow him to Derickson's house where he made the delivery.

There is no real dispute as to the six actual drug buys which occurred. Rather, the main issue raised by the defendants is that there was insufficient evidence to support the conspiracy convictions. They contend that the illegal sales were wholly unrelated actions taken by individual family members acting on their own.

On appeal, this court must affirm the jury's verdicts if, viewing the evidence most favorably to the government, there is substantial evidence to support the verdicts. United States v. Glasser, 315 U.S. 60 (1942). To establish a conspiracy, the government must show an agreement and an overt act. United States v. Williams, 503 F.2d 50 (6th Cir. 1974). Conspirators may join a conspiracy late or leave it early and still be liable. Furthermore, there is no requirement that co-conspirators know the full scope of the conspiracy. United States v. Shermetaro, 625 F.2d 104 (6th Cir. 1980).

With these principles in mind, we find sufficient evidence to support the conspiracy convictions as to all defendants. We believe that a rational jury could have found all five defendants guilty of conspiracy beyond a reasonable doubt. Initially, the jury could infer from the

family relationships that the five defendants were acting in concert. This inference is further supported by evidence which indicated that all five defendants worked together to sell drugs. For example, when Debbie and Donald Newsom sold Sandy marijuana which was an ounce short, it was Mehratza who delivered the missing ounce. And, when Donald Newsom was not home on a later occasion, Larry Newsom stepped into the breach and completed the sale. Furthermore, there was evidence that Monnie Derickson supplied drugs to each of the other defendants.

The defendants also attack the district court's instruction on conspiracy because the court did not specifically instruct the jury that it must find a conspiracy to distribute marijuana and cocaine. We find this argument to be without merit. The district court read the indictment and gave a copy to the jury, and the indictment is

clearly expressed in the conjunctive. We find that further instruction was unnecessary.

Several of the defendants also challenge the sufficiency of the evidence as to the individual convictions for distribution. We find no merit in any of these claims.

All of the defendants challenge the refusal of the district court to grant separate trials. The first step in this court's analysis is to determine whether the defendants were properly joined in the first instance under Rule 8(b) of the Federal Rules of Criminal Procedure. We find that joinder was proper inasmuch as this was a single conspiracy involving overt acts by all five defendants. Since the defendants were properly joined in the first instance, the denial of severance under Rule 14 of the Federal Rules of Criminal Procedure can only be overturned

upon a finding of abuse of discretion. United States v. Kendricks, 623 F.2d 1165 (6th Cir. 1980). To prevail, the defendants must show actual antagonism between co-defendants that will mislead or confuse the jury. Id. at 1168.

We find no such showing. The defendants basically put on no defense at all, thereby precluding a finding of antagonism. In any event, there is no indication that the jury was confused or misled. The fact that the jury acquitted Larry Newsom on the cocaine sale demonstrates their ability to separate out the evidence as it related to each defendant and each transaction. We find that the district court did not abuse its discretion in denying a severance.

The defendants also raise several claims with regard to discovery. One claim concerns the government's failure to give certain tapes relating to the

cocaine sale to the defendants during discovery. The district court suppressed the tapes but permitted oral testimony as to the conversations. The defendants contend that the district court should have imposed the stronger sanction of suppressing all testimony. We find that the district court did not abuse its discretion. The defendants were not surprised nor were they deprived of any meritorious defenses. United States v. Gladney, 563 F.2d 491 (1st Cir. 1977). A technical violation of discovery rules which did not prejudice the defendants in any way is not reversible error. See United States v. Vinson, 606 F.2d 149, 152 (6th Cir. 1979), cert. denied 444 U.S. 1074, reh. denied 445 U.S. 972 (1980). We likewise find no merit in the balance of the defendants' discovery claims.

Monnie Derickson contends that her conviction on Count Four should be reversed because the original bag which she turned

over to Sandy on April 8 was destroyed by the police. Inasmuch as this claim was never raised below, we will not consider it on appeal. We do note, however, that there is absolutely no evidence in the record that any such bag ever existed.

Finally, Larry Newsom and Beverly Mehratza challenge their sentences. Larry Newsom contends that the district court gave unwarranted weight to hearsay statements by the prosecutor while Mehratza contends that the court improperly considered her failure to testify at trial. We find no merit in either argument. A sentencing judge is entitled to examine a broad scope of information, Roberts v. United States, 445 U.S. 552 (1980), and we find no evidence that the district court exceeded that scope.

We find no merit in any of the defendants' claims. Accordingly, the judgments of the district court are affirmed.

ENTERED BY ORDER OF THE COURT

/s/
Clerk

Nos. 81-5297
81-5345
81-5346
81-5347

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee vs. MONNIE DERICKSON (81-5297) DEBBIE NEWSOM & DONALD NEWSOM (81-5345) LARRY NEWSOM (81-5346) BEVERLY MEHRATZA (81-5347) Defendants-Appellant	)	ORDER DENYING PETITION FOR REHEARING

Before: ENGEL and CONTIE, Circuit Judges; and Taylor, District Judge.*

A majority of the court having not voted in favor of an en banc rehearing, the

*The Honorable Robert L. Taylor, United States District Judge for the Eastern District of Tennessee, sitting by designation.

petition for rehearing has been referred to the hearing panel for disposition.

Upon consideration, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/_____
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VS.

MONNIE DERICKSON, et al.,

Defendant-Appellant.

Nos. 81-5297, 81-5345, 81-5346, 81-5347
District Court
Nos. 80-20154, et al.

MOTION TO STAY MANDATE
PENDING APPLICATION FOR CERTIORARI

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT:

COMES NOW Defendant-Appellant, through counsel, who would respectfully move this

Court for entry of an order staying the mandate in this cause, in order to allow the Defendant to remain free on the present bond pending the filing and, we trust, hearing on a Petition for Writ of Certiorari, to review an Opinion of this Court, by which Appellant is aggrieved, entered October 28, 1982.

Counsel regrets the short delay in filing the Motion to Stay Mandate but would beg the Court's indulgence. Counsel is just now nearing the end of a twenty-count, month-long political corruption trial of a Tennessee State Senator.

Appellant would respectfully pray that this Honorable Court grant an additional thirty (30) days stay of the issuance of the mandate, pursuant to the authority of Rule 41(b) of the Federal Rules of Appellate Procedure. Appellant respectfully would further move that, upon the timely filing of the Petition for Writ of Certio-

rari to the United States Supreme Court, and notification to the Clerk of this Court, the mandate be stayed pending disposition of the matter in that Court.

Respectfully submitted,

/s/
JAY FRED FRIEDMAN
Attorney for Defendant-Appellant
147 Jefferson, Suite 406
Memphis, Tennessee 38103
901/527-6518

CERTIFICATE OF SERVICE

I, JAY FRED FRIEDMAN, hereby certify that a copy of the foregoing Motion to Stay Mandate Pending Application for Certiorari has been served upon the Office of the United States Attorney, 10th Floor, Federal Building, 167 North Main Street, Memphis, Tennessee, 38103, this the (9th) day of November, 1982.

/s/
JAY FRED FRIEDMAN

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOS. 81-5297, 81-5345/46/47

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff-Appellee	:	
	:	
vs	:	O R D E R
	:	
MONNIE DERICKSON, ET AL.,	:	
	:	
Defendants-Appellants.	:	

ORDER STAYING MANDATE

ORDERED, That motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby granted and the mandate is stayed for thirty days from this date; provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any judge thereof, or if

the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue.

ENTERED BY ORDER OF THE COURT.

/s/
John P. Hehman, Clerk

CERTIFICATE OF SERVICE

I, JAY FRED FRIEDMAN, hereby certify that three copies of the foregoing have been served upon the Solicitor General, Department of Justice, Washington, D.C., 20530, and upon Mr. Hickman Ewing and Ms. Katherine Carlyle, United States Attorneys, 10th Floor, Federal Building, 167 North Main Street, Memphis, Tennessee, 38103, by U.S. Mail, first class postage prepaid, this the 14th day of December, 1982.

JAY FRED FRIEDMAN